

**REGULAR STATE CREDIT UNION BOARD MEETING
HELD BY CONFERENCE CALL
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

September 12, 2008

The regular meeting of the State Credit Union Board was called to order by Chairman Karsky in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota, at 9:32 a.m., Friday, September 12, 2008.

MEMBERS PRESENT: Timothy J. Karsky, Chairman (*Office*)
Paul Brucker, Member (*Office*)
Melanie Stillwell, Member (*Williston*)
Steve Tonneson, Member (*Minot*)
Darlene Watne, Member (*Minot*)

MEMBERS ABSENT: None

ALSO PRESENT: Robert J. Entringer, Assistant Commissioner (*Office*)
Corey Krebs, Chief Examiner – Credit Unions (*Office*)
Aaron Webb, Assistant Attorney General (*Office*)
Tim Brown, Dakota Plains CU, Edgeley (*Ohio*)
Jay Landsiedel, Town and County CU, Minot (*Minot*)
Spencer Hoover, Town and Country CU, Minot (*Minot*)

MINUTES PREVIOUSLY APPROVED BY MAIL

Chairman Karsky indicated the Board had previously received and approved the minutes of the regular meeting held on June 19, 2008.

APPLICATION BY DAKOTA PLAINS CREDIT UNION, EDGELEY, TO ESTABLISH A BRANCH AT 201 4TH AVENUE, SUITE 4, ENDERLIN

Assistant Commissioner Entringer referred to his Memorandum dated September 5, 2008, indicating no comments have been received concerning the application. Assistant Commissioner Entringer indicated the credit union's field of membership is detailed in his Memorandum and pointed out that the map included with the application clearly shows the City of Enderlin is within the credit union's field of membership.

Assistant Commissioner Entringer indicated Section 6-06-07(2) of the North Dakota Century Code provides that a credit union may establish and operate a branch within its field of membership, but that the branch office may not expand the geographic field of membership of the credit union. Assistant Commissioner Entringer stated the projections included with the application show that the applicant does not expect to record a profit at the branch until the third year of operation; however, the projected losses will impact the earnings of the credit union to some extent. The net income for the credit union through June 30, 2008, was \$16,335, which when viewed on an annualized basis, the projected loss for the first year of operations of the proposed Enderlin branch would negate all of the 2008 earnings. The impact to capital would be nominal as the current ratio of equity to assets is 11.7% after deducting the earnings year-to-date. Assistant Commissioner Entringer noted that the credit union is well within the statutory criterion for investment in fixed assets and further noted that the location would be leased which will result in a negligible impact on the fixed assets.

Assistant Commissioner Entringer indicated the credit union has complied with the criterion outlined in Section 13-03-15-04 of the North Dakota Administrative Code in order to establish a branch. Assistant Commissioner Entringer also indicated Section 13-03-15-04(2), North Dakota Administrative Code, sets forth the requirements the State Credit Union Board must consider when reviewing a branch application.

Assistant Commissioner Entringer noted there is no application to expand the credit union's field of membership; the Department has not received comments from any credit unions regarding the branch application, nor has it received any opposition. Assistant Commissioner Entringer stated the application indicates the community of Enderlin is not currently served by an operating credit union.

Assistant Commissioner Entringer stated the projections indicate the branch will show a small profit in the third year and the projected losses in years one and two will not significantly affect the equity position of the credit union.

Member Watne noted that the field of membership extends into South Dakota and wondered if the credit union had to stop at the border as far as customers. Assistant Commissioner Entringer deferred to President Brown as to whether the credit union has any members in South Dakota, but did point out that the credit union does have the capability to offer its services to South Dakota residents.

President Brown indicated that previous to 2006 the credit union had a 50 mile radius of Edgeley for its field of membership, and that the credit union has a branch in Ellendale which is 25 miles south and along the South Dakota border. President Brown stated the credit union does currently serve members in South Dakota. President Brown indicated many of the South Dakota residents affiliate with Ellendale for school and church, noting that Frederick, South Dakota, is a strong agricultural area. President Brown stated although the credit union serves members in that area it is not aggressively looking in that direction at this point in time.

Assistant Commissioner Entringer added when the credit union expanded its field of membership to a 75 mile radius of Edgeley we likely published notice in several South Dakota counties, and President Brown indicated that was correct. Assistant Commissioner Entringer also added that he did not publish notice of this branch application in South Dakota because he felt the Enderlin service area would likely not extend into South Dakota.

Chairman Karsky stated the credit union already has a 75 mile radius and this branch application does not extend that field of membership.

Chairman Karsky asked President Brown to explain the process explored for establishing this branch. President Brown indicated after the credit union expanded its field of membership to 75 miles it identified several communities to explore since there were no credit unions in those locations. President Brown stated the community of Enderlin continued to be the most encouraging as far as providing support for the cooperatives' way of doing business, as well as the support for the financial services they thought a credit union could offer. President Brown added that Enderlin is a railroad hub and the credit union has a number of members who are railway employees, and in addition there is a sunflower

processing plant which provides a very large stable payroll. President Brown continued that Enderlin is your typical agricultural community with an elevator in town, it has its own school district, and the development corporation has been very supportive, which is how the decision to expand in this area was made.

Member Brucker stated it looks like the credit union has done its research and this seems to be a good move.

Assistant Commissioner Entringer stated it is the Department's recommendation that the branch application be approved, as well as the Proposed Order which authorizes Chairman Karsky to sign on behalf of the Board.

It was moved by Member Brucker, seconded by Member Stillwell, and unanimously carried to approve the application by Dakota Plains Credit Union, Edgeley, to establish a branch at 201 4th Avenue, Suite 4, Enderlin, and to authorize Chairman Karsky to sign the Order on behalf of the Board.

President Brown left the conference call at 9:47 a.m.

Jay Landsiedel and Spencer Hoover were added to the conference call at 9:48 a.m.

REQUEST FOR TRUST POWERS AND MANAGEMENT OF MEMBERS' ASSETS BY TOWN AND COUNTRY CREDIT UNION, MINOT

Chairman Karsky indicated this issue is a continuation from a previous meeting.

Assistant Commissioner Entringer indicated the credit union's original request came before the State Credit Union Board in March, asking for permission to add additional activities for its Credit Union Service Organization (CUSO) to include real estate brokerage, appraisal, and farm management services. Assistant Commissioner Entringer indicated the State Credit Union Board did approve the real estate brokerage services, but not the appraisal services because of the independence issue, and the Board directed Department staff to do more research on the independence issue for appraisals and brought that back before the Board in June. Assistant Commissioner Entringer stated at the June meeting Examiner Krebs presented information from a "Frequently Asked Question Guidance" (FAQ Guidance), issued by the regulators on the Federal Financial Institutions

Examination Council (FFIEC) in March 2005, indicating that an appraisal conducted by an employee of an affiliate would meet the independence test as long as that person was not involved in the lending collection or investment functions associated with the property. Assistant Commissioner Entringer indicated Department staff again visited with the NCUA regarding appraisal activity and independence issues. Assistant Commissioner Entringer stated also at the June meeting the Board discussed the issue of farm management and the fact that the CUSO could do farm management if it had trust powers, and at that time President Olson asked the Board if he could request it to consider approving trust powers for the CUSO. Assistant Commissioner Entringer had informed President Olson a written request was needed before the Board could act on that request. The Department received a letter dated June 24, 2008, which was based on a meeting of the Board of Directors of Town and Country Credit Union; in the third paragraph President Olson states "We understand that the management of members' assets is a power that may have to be granted under trust powers".

Assistant Commissioner Entringer continued for clarification purposes if the State Credit Union Board would approve trust powers under the CUSO rule, the CUSO would then have to apply to the State Banking Board for trust powers as an independent trust company. Assistant Commissioner Entringer this is a two-prong approach in that the State Credit Union Board could grant trust powers; however, the State Banking Board still must actually grant the authority to act as a trust company.

Chairman Karsky reminded the Board that this whole process began because the CUSO would like to purchase a business in Minot that currently offers real estate brokerage, appraisal services, and farm management. The credit union would like to be able to have the CUSO purchase this business and perform these activities.

Assistant Commissioner Entringer added as he understands, this is an "all or nothing deal". Mr. Landsiedel indicated this is the desire of both President Olson and the Board of Directors of the credit union, and if they can only offer real estate brokerage services they are likely not interested.

Assistant Commissioner Entringer continued that the State Credit Union Board, at its March meeting, had already approved real estate brokerage services and there was a long discussion as to what services that entails. Assistant Commissioner Entringer stated that he and Assistant Attorney General Webb discussed the real estate brokerage services and from his understanding of the

North Dakota Century Code related to real estate brokerage, it allows a broker to negotiate leases; however, it does not appear to authorize the real estate broker to sign the lease on behalf of the property owner. Assistant Commissioner Entringer stated the authority to sign a lease on behalf of another would have to come through a power of attorney or some sort of other fiduciary relationship; however, that does not mean that the credit union could not collect lease payments. If, for example, the credit union negotiated a lease on behalf of the property owner, the property owner then signed the lease agreement and entered into an agreement with the CUSO or the credit union to collect the lease payments and forwarded that money to the owner of the property, the activities in this example would not require trust powers and would be permissible now. The only activity that would actually require trust powers is the actual signing of the lease on behalf of the property owner. Assistant Commissioner Entringer continued that signing a lease on behalf of the property owner would constitute a fiduciary relationship, and that as of now the State Credit Union Board has granted the CUSO real estate brokerage powers which would allow it to negotiate the lease and although the CUSO could not sign the lease, they could accept/collect the payments for the property owner. The only activity it could not do is to sign the lease on behalf of the owner.

Chairman Karsky questioned if this would mainly be done for farmers and farm management, and Assistant Commissioner Entringer indicated that is his understanding as to what this company does. Mr. Landsiedel also indicated this is correct.

Assistant Commissioner Entringer stated he is not sure how critical it is that the credit union or CUSO be able to sign the lease on behalf of the property owner and questioned whether that was crucial in this matter.

Assistant Commissioner Entringer stated it would be his recommendation that the State Credit Union Board deny the request for trust powers because the CUSO can already negotiate the lease and collect payments, just not sign the lease for the property owner, and asked Mr. Landsiedel if this is a critical part of the transaction. Mr. Landsiedel indicated he did not believe so and that the land owner could do that, and added as a further heads up that President Olson has suggested that in the future the CUSO do other things for members as far as trust services.

Chairman Karsky indicated the credit union can come back to the State Credit Union Board and ask for trust powers at a later date; however, the key item is that the State Banking Board is going to ask for the experience of management,

as well as the education and training of the individuals operating the trust company, as well as what types of trust services are proposed. Chairman Karsky added there is a lot of risk, liability, and very little profit in the area of trust services which is why the State Banking Board has been selective as to who it approves for these types of activities.

Assistant Commissioner Entringer reminded the Board that at the June meeting Examiner Krebs presented the FAQ Guidance which clearly showed that an appraiser employed by an affiliate is considered independent of the transaction as long as that person is not involved in the lending, collection, or investment functions for that particular loan even though they are employed by the affiliate. Assistant Commissioner Entringer pointed out the federal level addresses the issue of independence in its view. Assistant Commissioner Entringer indicated in a telephone conversation on September 11th with the NCUA that they absolutely agree with the information from the FAQ Guidance, adding that at the present time a federal credit union does not have the power to do appraisals in a CUSO. Assistant Commissioner Entringer continued that Associate General Counsel Sheila Albin indicated that any credit union can employ a certified appraiser who could perform appraisals for the credit union provided they meet the criteria that they are not involved in the lending, collection, or investment functions for that loan.

Mr. Landsiedel asked if an individual who is a part-time employee of the credit union that performs appraisals can also work for the CUSO performing the other two functions, and Assistant Commissioner Entringer indicated that is correct.

Chairman Karsky stated that although the FFIEC FAQ Guidance states that the appraiser is independent if they meet the criteria outlined in law that the credit union better have some appropriate policies and procedures in place as far as ordering appraisals, and what they are looking for as far as true independence. Chairman Karsky added he has a problem with the independence issue when an individual who is employed with the credit union makes the appraisals, and the credit union makes the loan. Chairman Karsky stated from his perspective, regardless of what the FAQ Guidance states it does not in his mind meet the true test of independence. Chairman Karsky added that given the current economic situation you would want to make sure those appraisals are accurate.

Assistant Commissioner Entringer stated the evaluation process for appraisals at the credit union has to be very good, regardless if the appraisal is

done by a staff appraiser, an appraiser employed by the CUSO, or a completely independent appraiser; the appraisal must meet the criteria under Part 722 of NCUA's Rules and Regulations.

Chairman Karsky added if the State Credit Union Board wants to approve that activity for the CUSO the first step is to go back and change the North Dakota Administrative Code to add appraisals to the list of permissible activities for a CUSO.

Assistant Commissioner Entringer directed the Board's attention to Section 13-03-23-05 of the North Dakota Administrative Code which details the permissible services and activities for a CUSO; the first subsection lists the activities that can be done by a CUSO without approval of the State Credit Union Board, and the second subsection lists those activities that must be approved by the State Credit Union Board before being offered. Assistant Commissioner Entringer indicated as long as the activity is added under Subsection 1 or 2 the Department would not have to go to the NCUA for its concurrence on the activity.

Chairman Karsky indicated the Department's recommendation would be to add appraisal services under Section 13-03-23-05(2), which would require the CUSO to get permission from the State Credit Union Board for this activity.

Chief Examiner Krebs clarified that the only reason you would need to do this is if the credit union is proposing to offer appraisal services to others outside of the credit union, rather than just conducting appraisals for the credit union.

Mr. Landsiedel stated that President Olson hopes the credit union would be able to offer these appraisal services to others; not only performing appraisals for the credit union.

Assistant Commissioner Entringer pointed out at the last meeting Member Brucker asked if we would be amending this rule simply for one credit union, and Assistant Commissioner Entringer reiterated that it would certainly be available to all credit unions which own a CUSO, but at the present time Town and Country Credit Union is the only credit union asking to have these services added.

Mr. Landsiedel indicated that President Olson wanted him to reiterate to the Board that Town and Country Credit Union's management team remains committed to getting this accomplished; one reason being that President Olson comes from a Farm Credit background and Farm Credit had in-house appraisers

which is primarily where this issue stems, allowing the competition to offer these services which he would like to offer to the credit union's members.

Chairman Karsky stated that argument has gone away because if the credit union could hire an in-house appraiser, as long as those appraisals are only performed for Town and Country Credit Union, the only criterion is that the requirements of the law for certified appraisals be met when necessary. Chairman Karsky clarified that Town and Country Credit Union is asking for permission to offer appraisal services to non-members which would have to be done through the CUSO and the State Credit Union Board will have to authorize that activity and change the North Dakota Administrative Code.

Mr. Landsiedel indicated that is exactly what President Olson and the Board of Directors would like.

Member Brucker asked if Assistant Attorney General Webb has been involved throughout this process and if so, is this his opinion as well. Assistant Attorney General Webb indicated he has been involved in the process, he was involved in the conference call with NCUA on September 11, and has also done some background research and looking at the rule as it is written, it would need to be adjusted to allow the State Credit Union Board to have the discretion to allow the appraisal services and then grant that power to the entity directly after the rule is changed.

Assistant Commissioner Entringer recapped that first the State Credit Union Board would have to amend the rule if this is added under Section 13-03-25-05(2), and once the rule is approved as final the Board could approve the appraisal services; therefore, today the only action the Board can take is whether or not to amend the North Dakota Administrative Code.

Assistant Commissioner Entringer suggested in order to make the amendment to the rule more cost effective, he reminded the Board at the last meeting it was discussed the possibility of amending the Member Business Lending rule in an attempt to get NCUA to approve the rule so North Dakota credit unions could operate under North Dakota regulations versus the federal rule.

Chairman Karsky stated he has talked to NCUA and there is some proposed legislation for the Federal Member Business Lending rule, adding NCUA will likely work with us; however, if it is a major change it may be difficult.

Member Watne asked regarding appraisals whether or not all appraisals are certified. Chief Examiner Krebs indicated there are different levels of appraisals which are based on loan size; therefore, it depends on the size of the loan as to whether it needs to be a state-licensed appraisal or a certified appraisal. Member Watne referred to amending two different rules, one dealing with appraisals and the other dealing with member business lending, and wondered if these are published together, if one does not get approved does that mean they are both not approved; therefore, should they be published separately?

Chairman Karsky indicated the rules can be acted on separately and approval or disapproval of one rule would not affect the other rule. Chairman Karsky pointed out even if we amend the Member Business Lending rule, if NCUA does not approve it we are no better off since we would have to revert to the federal rule.

Chief Examiner Krebs indicated there are some minor corrections that need to be made to the Member Business Lending rule which could take some time.

Member Tonneson asked for clarification on the comment made earlier that appraisal services are permissible for a federal credit union, and Assistant Commissioner Entringer indicated that appraisal services for a CUSO owned by a federal credit union are not permissible. Member Tonneson indicated he felt that was odd in that it seems like it creates more independence since it is not an employee of the credit union; therefore, going through the recommended process means state law could take precedence by allowing a state-chartered CUSO to offer appraisal services whereas a federal credit union's CUSO could not.

Chairman Karsky indicated that is the advantage of the state charter; however, Member Tonneson asked if this would not fall under the category "if a federal credit union cannot do it a state-chartered credit union cannot either"? Chairman Karsky indicated during our conversation with NCUA yesterday it was clear that the State Credit Union Board can authorize this for state-chartered credit unions and NCUA would simply have to live with it.

Chief Examiner Krebs pointed out that NCUA's CUSO rule only applies to federal charters and does not govern anything with regard to a state-chartered CUSO. Member Tonneson questioned the difference in this rule than the Member Business Loan rule, and Chairman Karsky indicated the federal Member Business Loan rule applies to all insured credit unions.

Member Brucker asked if Mr. Landsiedel as to probability of the credit union actually going through with this transaction, given the lengthy process involved in amending the North Dakota Administrative Code. Mr. Landsiedel indicated it is a very favorable probability as long as it does not take another nine months since time is critical; adding that President Olson and the business owner have been in discussions for approximately nine months and it would depend if the business owner can hold on awhile longer.

Assistant Commissioner Entringer pointed out the amendment to the 40 year mortgage rule was started in March, just completed, and will not be effective until October 1st.

Mr. Landsiedel indicated he would relate to President Olson the process could take up to six months, and he in turn could inform the business owner of the possible time frame.

Member Tonneson asked Mr. Landsiedel if the whole deal would be put on hold since they would not be allowed to offer appraisal services outside of the credit union until this change is made. Mr. Landsiedel stated he anticipates it would be put on hold because of the risk that the appraisal services might not be approved.

Chairman Karsky stated he feels the next step is for the Board to act on the request for trust powers, adding that the Department recommends the request be denied as it is not needed.

Member Tonneson asked for a point of clarification from Mr. Landsiedel that if the trust powers are not approved, based on what Chairman Karsky and Assistant Commissioner Entringer stated, it would not affect the credit union at this time. Mr. Landsiedel indicated it should not affect the credit union, based on his understanding that the landowner would have to sign the lease. Member Tonneson continued that if the credit union chooses to do more trust services in the future it could come back to the State Credit Union Board at that time, and Mr. Landsiedel concurred.

It was moved by Member Brucker and seconded by Member Watne to deny the request for trust powers by Town and Country Credit Union, Minot.

Assistant Commissioner Entringer indicated upon a question from Member Watne the only power the CUSO has under real estate brokerage is to negotiate the

lease; however, they cannot sign the lease on behalf of the landowner, as that would require trust powers. Assistant Commissioner Entringer continued the CUSO does not necessarily need trust powers if they are not going to sign the lease, which is why the Department is recommending the request for trust powers at this time be denied.

The above motion was unanimously carried.

Chairman Karsky asked if the State Credit Union Board would like to amend Section 13-03-23-05(2) of the North Dakota Administrative Code to add appraisal services as a permissible activity and service; adding the Department recommends this amendment.

Member Tonneson asked for clarification as to whether this means the CUSO could not do this without coming to the State Credit Union Board for approval. Chairman Karsky indicated that was correct.

It was moved by Member Tonneson, seconded by Member Watne, and unanimously carried to amend Section 13-03-23-05(2) of the North Dakota Administrative Code to add appraisal services.

Chairman Karsky indicated we currently have a Member Business Loan rule under Chapter 13-03-16 of the North Dakota Administrative Code that NCUA has never approved, and suggested that rather than amend the rule at this time it made more sense to see what changes we can get NCUA to approve and at that time go through the rulemaking process to make those changes.

Member Tonneson asked why we need to republish the rule if no changes are made and Chairman Karsky indicated we would not republish, but added that in 2000 the NCUA Board voted to deny North Dakota's request to have its Member Business Loan rule approved. Chairman Karsky explained we now need to meet with NCUA to see if we can get the objections they had satisfied, or if they looked at it again and approved it, we would not have to amend the rule.

Chief Examiner Krebs indicated in the current Member Business Loan rule there is a section on allowance for loan and lease losses which conflicts with a section that was approved previously under Chapter 13-03-06. Chairman Karsky added it was not the allowance section in our Member Business Loan rule that was the hang-up with NCUA. Chief Examiner Krebs stated it was his understanding the additional 10 percent for agricultural operating purposes was the hang-up for

NCUA, which appears to be the catalyst that the industry wants us to push this again. Chairman Karsky stated that individual credit unions have gotten a waiver from NCUA to allow this additional 10 percent on a case-by-case basis. Chief Examiner Krebs stated there are probably additional issues that need to be updated when considering the federal Member Business Loan rule, and Chairman Karsky stated there is no need to do that until we get NCUA's assurance that they will approve our rule.

Member Tonneson indicated if it would only take a week or two to get NCUA's concurrence we should wait; however, it does not sound like that will be the case and since Town and Country Credit Union's issue is time critical we should move forward with the appraisal amendment.

Mr. Landsiedel and Mr. Hoover left the conference call at 10:32 a.m., and the Board went into closed session.

Timothy J. Karsky, Chairman

Robert J. Entringer, Secretary